



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Valerie Derosier, Bureau of Land & Water Quality, Augusta
RE: Consent Agreement for Bryan Emery and Kristi Emery
DATE: April 15, 2010

Statute and Rule Reference: *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits soil disturbance in and adjacent to a river, stream or brook without first obtaining a permit from the Department.

The Protection and Improvement of Waters Act, 38 M.R.S.A. § 413, states, in pertinent part, that no person shall directly or indirectly cause soil material to be discharged into waters of the State without a permit therefore from the Department.

The Erosion and Sedimentation Control Law, 38 M.R.S.A. § 420-C, states, in pertinent part, that a person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource.

Location: Detroit, Maine

Description: In September 2009, staff observed that Bryan and Kristi Emery had excavated a 275 foot long by ten foot trench through a freshwater wetland directly adjacent to the Sebasticook River. Furthermore, they placed the dredge spoils in an area of the same dimensions, in the freshwater wetland directly adjacent to the trench. Neither Bryan Emery nor Kristi Emery first obtained a permit for this activity. Staff observed no erosion controls in place and silt laden water in the trench all the way to the river.

Environmental Issues: Dredging severely alters existing habitat, at least temporarily, and negatively impacts the water quality of a river, stream or brook due to the resuspension and subsequent deposition of silt. Sedimentation smothers habitat vital to aquatic organisms for shelter and reproduction. Silt also damages fish gills, making the fish susceptible to infection and limits their ability to utilize available oxygen. Also, freshwater wetlands can provide a number of functions, including wildlife habitat and the ability to filter storm water pollutants. Disturbing a wetland diminishes the functions of the wetland.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Bryan and Kristi Emery pay a monetary penalty of \$2,500.00, which has been paid. The Agreement also stipulates that Bryan and Kristi Emery submit a restoration plan and implementation schedule; the plan has been submitted and approved by the Department. All restoration will be completed by September 1, 2010.

The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.



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IN THE MATTER OF:

BRYAN EMERY AND KRISTI EMERY)	ADMINISTRATIVE CONSENT
DETROIT, SOMERSET, MAINE)	AGREEMENT
NRPA, E&S, § 413)	(38 M.R.S.A. § 347-A)
2009-121-L)	

This Agreement by and among Bryan Emery, Kristi Emery, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Bryan Emery and Kristi Emery, 43 Main Street, Detroit, Maine, own a parcel of land on the River Road in Detroit, Maine as described and recorded in Book 3443 on Page 184 of the Somerset County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement contains a portion of a freshwater wetland, as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(4), which is connected to the Sebasticook River which is a river, stream or brook as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(9). The freshwater wetland and Sebasticook River are protected natural resources pursuant to *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(8), and waters of the State as defined by the *Protection and Improvement of Waters* law, 38 M.R.S.A. § 361-A (7).
3. On September 8, 2009, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that Bryan Emery and Kristi Emery excavated a 275 foot long by 10 foot wide trench through a freshwater wetland to the Sebasticook River for kayak access to the river. The spoils from the trench were deposited in a 10 foot wide swath adjacent to the trench in the freshwater wetland. The area altered in the freshwater wetland is approximately 5,500 square feet in size. Neither Bryan Emery nor Kristi Emery first obtained a permit from the Department for these activities. At the time of inspection, no erosion controls were installed at the site and staff observed silt suspended in the water in the trench all the way to the Sebasticook River.
4. The activities described in Paragraph 3 of this Agreement constitute the following violations:
 - A. By displacing soil in a freshwater wetland and by displacing soil in and adjacent to a river, stream or brook without first obtaining a permit from the Department, Bryan Emery and Kristi Emery violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

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IN THE MATTER OF:

BRYAN EMERY AND KRISTI EMERY
DETROIT, SOMERSET, MAINE
NRPA, E&S, § 413
2009-121-L

) ADMINISTRATIVE CONSENT
) AGREEMENT
) (38 M.R.S.A. § 347-A)
)

- B. By discharging soil to waters of the State, Bryan Emery and Kristi Emery violated the *Protection and Improvement of Waters* law, 38 M.R.S.A. § 413.
- C. By conducting or causing to be conducted an activity that involves filling, displacing or exposing soil or other earthen materials without taking measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource, Bryan Emery and Kristi Emery violated the *Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C.
5. On October 20, 2009, the Department issued a Notice of Violation to Bryan Emery and Kristi Emery regarding the violations described in Paragraphs 3 and 4 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
6. The Department has regulatory authority over the activities described herein.
7. Pursuant to 38 M.R.S.A. §§ 341-D (6) (C) and 347-A (1) (A) (1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
8. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
9. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Bryan Emery and Kristi Emery agree to:
- A. No later than January 15, 2010, submit a restoration plan to the Department to place the dredged material back into the trench and restore the grade and native vegetation in the area to its former condition. The restoration plan is subject to review and approval by Department staff and must include a specific time schedule for the completion of all phases of the restoration. Implement the approved plan in accordance with the schedule contained therein.
- B. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this Agreement.
- C. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Two Thousand Five Hundred dollars (\$2,500.00) as a civil monetary penalty.
10. The Department and the Office of the Attorney General grant a release of their causes of action against Bryan Emery and Kristi Emery for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 9 of

IN THE MATTER OF:

BRYAN EMERY AND KRISTI EMERY
DETROIT, SOMERSET, MAINE
NRPA, E&S, § 413
2009-121-L

) ADMINISTRATIVE CONSENT
) AGREEMENT
) (38 M.R.S.A. § 347-A)
)

this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

BRYAN EMERY


BRYAN EMERY

DATE: 1-11-10

KRISTI EMERY


KRISTI EMERY

DATE: 1/11/10

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____

DATE: _____

SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____

DATE: _____

MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL